

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-785

February 5, 2002

VERIZON NEW ENGLAND, INC.  
D/B/A VERIZON MAINE  
VERIZON ADVANCED DATA, INC.  
Request for Approval of Affiliated Interest  
Transaction and Transfer of Assets to Return  
Advanced Service Assets From Verizon  
Advanced Data Inc. to Verizon-Maine and for  
Verizon Advanced Data Inc. to Abandon Services  
Under Section 1104

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

---

In this Order, we approve, pursuant to 35-A M.R.S.A. § 707 (3), subject to the filing of actual tariffs for approval, the request of Verizon Maine (Verizon or the Company) to transfer back to itself certain assets of Verizon Advanced Data, Inc. (VAD) and to undertake several related actions designed to re-integrate the advanced data service operations currently provided by VAD back into the Company. The Company originally transferred the assets to VAD after the Commission granted its permission to do so through an Order issued on November 6, 2000, in Docket No. 2000-747. VAD received certification from this Commission as a facilities-based and reseller Competitive Local Exchange Carrier (CLEC) in Docket No. 2000-625, and VAD has been offering advanced services to customers since that certificate was granted.

The Company originally transferred the assets used in providing advanced services, as defined by the Federal Communications Commission (FCC), to VAD as a condition imposed by the FCC in granting permission for Bell Atlantic and GTE to merge and form the entity known as Verizon Communications, which is the corporate parent of Verizon Maine. The FCC required Verizon Communications to provide advanced services, if it chose to do so at all, through a structurally separate affiliate. In response, Verizon Communications formed VAD, and in Maine, the Company transferred its advanced services assets to VAD after obtaining Commission authority pursuant to 35-A M.R.S.A. § 707, as well as several related approvals required under §§ 1101 and 1104.

On January 9, 2001, the United States Court of Appeals for the District of Columbia in *Association of Communications Enterprises v. Federal Communications Commission*, 235 F. 3d 662 (D.C. Cir. 2001) rejected the FCC's reasoning supporting structural separation for the provision of advanced services. The Court concluded that the FCC's determination that an advanced services affiliate would not be a successor or assign of the ILEC would improperly allow an ILEC to avoid the resale obligations

contained in the TelAct by merely creating a wholly-owned separate subsidiary. The FCC Order approving the merger explicitly provided Verizon with the ability to return the assets involved in the provision of advanced services to Verizon Maine if the separate entity requirement was reversed on appeal. Verizon has chosen to exercise its option, and, to accomplish that return, it seeks several approvals required under Title 35-A.

Specifically, the Company seeks the following approvals from the Commission, pursuant to various sections of Title 35-A: the sale by VAD to Verizon Maine of all the assets used in the provision of intrastate advanced services, pursuant to Section 1101; the purchase of the advanced services assets by Verizon Maine, pursuant to Section 707; permission for VAD to abandon the provision of advanced services and to withdraw its tariff once the asset transfer is completed, pursuant to Section 1104; and authorization for Verizon Maine to provide advanced services under the terms and conditions contained in an illustrative tariff provided with the Company's current filing.

The Company asserts that the proposed transaction is in the public interest because it conforms Verizon's operations to the applicable court decision, eliminates multiple affiliated ILECs in the same service territory, reduces the potential for customer confusion, and returns Verizon's operations to the basic model existing before the entry of the FCC Merger Order. Verizon further asserts that customers will not be harmed and that the Company will make a seamless transition by honoring all VAD terms and conditions. The Company proposes to transfer the assets back to itself at their existing net book value, in accordance with FCC accounting rules for the transfer of assets between affiliates that are both regulated entities. Under the reasoning contained in the Court of Appeals opinion, VAD is properly considered an ILEC. The Company included a detailed listing of the assets to be returned and their respective net book values in its filing. As part of the proposed asset transfer transaction, for all assets that Verizon Maine originally transferred to VAD, the Company will either surrender the Verizon Ventures III Inc. shares that it received in the original asset transfer to VAD, or it will receive the assets as a dividend-in-kind on those shares. For assets that have been purchased subsequently by VAD, Verizon will purchase those assets for cash at their current net book value.

After the return of the assets to Verizon, the Company asserts that it will be necessary for VAD to process orders for advanced services for a short period of time and to provide other services in order to allow the continued provision of the services. Verizon and VAD had entered into a Master Services Agreement (MSA) that was approved by the Commission in Docket No. 2000-747. All services to be provided by VAD to the Company will comply with the provisions of the MSA.

Certain VAD customers are receiving intrastate ATM and Frame Relay service under contracts with VAD. To ensure that those customers will continue to receive those services under the same terms and conditions, VAD will transfer the contracts to Verizon and will provide the appropriate customer notifications. VAD has also been offering service pursuant to rates, terms and conditions contained in tariffs approved by this Commission. Verizon Maine proposes to issue new tariffs that conform

substantially to the terms and conditions of the VAD tariffs, but that eliminate any inconsistencies with other Verizon tariff conditions. The Company proposes that after the transfer is approved and completed, VAD will withdraw its tariffs and Verizon Maine will simultaneously issue tariffs that are “substantially in conformance” with the illustrative tariffs that are contained in the Company’s filing.

Finally, the Company proposes to apply the existing avoided cost discount to eligible advanced services that any CLECs wish to purchase, and it will make available any unbundled network elements (UNEs) pursuant to FCC and Maine PUC orders.

Based on the information and representations contained in the Company’s filing, we find that the proposed transaction between Verizon Maine and VAD is not adverse to the public interest and we therefore approve it, subject to the filing and approval of actual advanced services tariffs. We find that the proposed transfer of assets and service obligations complies with all currently applicable state statutes and rules and federal regulations. The Company has clearly acknowledged its resale and UNE obligations, and we believe the return of the provisioning of advanced services to Verizon, as an ILEC, will reduce confusion and improve service to retail and wholesale customers.

Therefore, we

#### O R D E R

1. That the request of VAD, pursuant to 35-A M.R.S.A. § 1101, to sell at net book value all of its property used in the provision of intrastate advanced services to Verizon Maine is approved.
2. That the request of Verizon Maine, pursuant to 35-A M.R.S.A. §707, to purchase the advanced service assets of VAD at their net book value is approved.
3. That the request of VAD, pursuant to 35-A M.R.S.A. § 1104, to abandon the provision of intrastate advanced services and withdraw its tariffs for those services once the asset transfer to Verizon Maine occurs is approved.
4. That the request of Verizon Maine to begin providing advanced services at the moment VAD abandons these services is approved, subject to Verizon Maine filing actual tariffs for approval in compliance with this Order.
5. That if Verizon Maine files rate schedules and terms and conditions that are substantially identical to the those contained in the illustrative tariffs filed with this case, they shall be considered in compliance with this Order and approvable by the Director of Technical Analysis.
- 6.

Dated at Augusta, Maine, this 5th day of February, 2002.

BY ORDER OF THE COMMISSION

---

Raymond Robichaud  
Assistant Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.